

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 3497 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE**

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India, 1950
or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIREN SHIVABHAI PATEL - Applicant(s)**Versus****STATE OF GUJARAT - Respondent(s)**

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Appearance :

MR ND NANAVATI, SR. ADVOCATE, WITH MR. MOUSAM YAGNIK,
ADVOCATE for the Applicant.

MR HM PRACHCHHAK, APP, for the opponent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**Date : 30/06/2006****ORAL JUDGMENT**

1. This is a successive bail application preferred by the

applicant on the ground of delay caused in conclusion of trial. The applicant is facing charges for offences punishable under Sections 417, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code. The allegations against the applicant are that several passport and visa stamps (stickers) were seized from the room occupied by the applicant in the hotel, at Rajkot. Out of the seizure, the visa stickers were found to be counterfeit or spurious. Even from the office of the applicant, seven passports and one bogus visa sticker have been seized. During investigation, it was found that Dinesh alias Shetty Patel produced two bags which, according to him, were given to him by the applicant. Those bags contained several passports, leaving certificates, visa stickers, etc. One of the bags also contained a receipt issued by Ahmedabad Municipal Corporation in the name of the applicant, which, prima facie, can be considered to be sufficient to connect the bags with the applicant. In short, the applicant's involvement is, prima facie, found in a serious offence.

2. Learned Senior Advocate, Mr. Nanavati, appearing with learned Advocate, Mr. Mousam Yagnik, submitted that there are

large number of witnesses to be examined and only 32 witnesses are examined. The case is not making progress at a pace that it should ordinarily proceed. This is likely to cause delay in disposal of the case. The applicant is in jail since 23rd December, 2003 and, therefore, he may be admitted to bail.

2.1 Learned Senior Advocate, Mr. Nanavati, has relied on decision in the case of **Mehmood Mohammed Sayeed v. State of Maharashtra, (2002) 10 SCC 677**, wherein considering that the appellant before Their Lordships was in custody for about one year, he was admitted to bail upon certain conditions. The appellant before Their Lordships was facing charges for offences punishable under Sections 463, 467, 461, 419 read with Section 120-B of the Indian Penal Code. That was a case where the appellant was alleged to have some links with an international terrorists' gang. Learned Advocate, Mr. Nanavati, also placed reliance on decision in the case of **Surinder Singh v. State of Punjab, (2005) 7 SCC 387**, where it was held that right to speedy trial and right to personal liberty are fundamental rights implicit in the broad sweep of Article 21 of the Constitution of India and, therefore, where the

trial is likely to be delayed, personal liberty may not be curtailed unduly. Learned Advocate, Mr. Nanavati, therefore, submitted that the applicant's case may be considered for bail.

3. The application is opposed to by learned Additional Public Prosecutor, Mr. Prachchhak. He has relied on the decision in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Another, (2004) 7 SCC 528**, where the decision of the High Court, releasing the accused on bail on the ground that he had been in custody for a period of 3 ½ years and that there was no likelihood of the trial being concluded in the near future, was held to be not justified. A view was taken that where the offence is grave, this may not be a relevant consideration. Mr. Prachchhak, therefore, submitted that the applicant is involved in a serious offence and, therefore, this application may not be entertained, being successive one. He further submitted that the trial is in progress, no fault can be found with the prosecution for the delay and, therefore also, the bail application may be rejected.

4. Learned Senior Advocate, Mr. Nanavati, tried to

distinguish the decision in the case of Kalyan Chandra Sarkar (supra) by saying that, in that case, there were serious allegations against the accused of tampering with the evidence, which is not the case herein and, therefore, the decision will not be applicable to the facts of the present case.

5. As stated earlier, the applicant is involved in a serious offence, which will have direct bearing not only on the Indian society but also on international relations of the country.

6. There is no dispute about the fact that trial has commenced and about 32 witnesses have been examined. It is true that there are still a large number of witnesses to be examined, but that by itself cannot be a ground for considering the applicant's successive application for bail. In such cases, offences are committed in a scheming and well planned manner. The victims are also large in number and, therefore, there has to be large number of witnesses to be examined. This may result in some delay. The Apex Court in the case of Kalyan Chandra Sarkar (supra) observed that “*the mere fact that the accused has undergone*

certain period of incarceration by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.” The principle, therefore, is that, period of incarceration by itself or likelihood of delay in conclusion of the trial by itself or both cumulative would not be sufficient ground for enlarging the accused on bail where the gravity of offence alleged is severe.

6.1 The second part regarding allegation of tampering with witnesses would be an additional factor in the facts of that case, where the accused was enlarged on bail. Such a situation may arise only in a case where the accused is enlarged on bail and not in other cases. In the opinion of this Court, therefore, the discretion cannot be exercised in favour of the applicant.

6.2 The decision in the case of Mehmood Mohammed

Sayed (supra), relied upon by learned Senior Advocate does not lay down any absolute principle of law, but the order was passed in the facts of that case.

6.3 So far the decision in the case of Surinder Singh (supra) is concerned, there cannot be any dispute that speedy trial is a fundamental right implicit in the broad sweep of Article 21 of the Constitution. However, in that decision itself it is observed that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, fairness assured by Article 21 would receive a jolt. The question, therefore, would what could be an unduly long period. In the opinion of this Court, there cannot be any strait-jacket formula or definition to define an unduly long period. It would depend on case to case and circumstance to circumstance. A case where there are less number of witnesses cannot be equated with a case where there are large number of witnesses. The period consumed, obviously, would be different in two different cases. In the instant case, when there are large number of witnesses, approximately 149 witnesses, the trial would certainly take some time and, therefore,

the decision cannot be applied to the facts of the present case.

7. The application, therefore, must fail and stands rejected. Rule is discharged.

[A. L. DAVE, J.]

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